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CASE_____

IN THE SUPREME COURT
OF THE UNITED STATES

EDUARDO E ROJAS ------PETITIONER

vs

IONICS,INC. ET.AL.,------RESPONDENTS

On Petition for writ of certiorari to the United States courts of appeals for the first circuit

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Petition for Writ of Certiorari

EDUARDO E ROJAS

PRO-SE

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30 pp

QUESTION PRESENTED FOR REVIEW

(a) Whether the determination by the Federal courts violates the constitutional rights of Petitioner article IV section 1

LIST OF PARTIES

All parties do not appear in the Caption of the case on the cover page

A list of all parties to the proceeding in the court whose judgement is the subject of this Petition is as follows.

ARTHUR D GOLDSTEIN. Chief Executive Officer

STEPHEN KORN. Administrator, General counsel

MARIANNE M WINSSER. Human Resource Manager

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgement below.

OFFICIAL REPORT OF THE OPINION AND

ORDERS ENTERED IN THE CASE BY COURTS

(a) The Judgement of the United States Court of Appeals appears at
Appendix A to the petition and is unpublished.

(b) The Memorandum and order of the United States District Court appears at
Appendix B to the petition and is unpublished.

(c) The report and recommendation of District Court Magistrate Judge appears at
Appendix C to the petition and is unpublished.

BASIS FOR JURISDICTION IN THE COURT

(i) The judgement to be reviewed was entered on June 20 2002

This petition is filed under this court's rule 11.

(ii The statutory provision believed to confer on this court jurisdiction to review on a writ of certiorari the judgement or order in question is USC.28 section 1253

(iii) The Defendants attorney on record has been notified by Mail.

(iv) The USC.28 and 2403 may apply

CONSTITUTIONAL PROVISIONS
STATUTES

USC 29 section 623 (f)(2) :

[No such employee benefit plan or voluntary early retirement incentive plan shall excuse the failure to hire any Individual, and no such Employee plan shall require or permit the involuntary retirement of any individual
specified by section 631(a). of this title.]

USC 29 section 626 (f) (1) ----------OWBPA

[An individual may not waive any right or claim under this chapter unless the waiver is knowing and voluntary. Except as provided in paragraph (2) a waiver may not be considered knowing and voluntary unless at a minimum

(A) The waiver is part of an agreement between the individual and the Employer that is written in a manner calculated to be understood by such individual, or by the average individual eligible to participate.

(B) The waiver specifically refers to rights or claims arising under this act.

(C) [The individual does not waive rights or claims that may arise after the waiver is executed.]

(D)[The individual waives rights or claims only in exchange for consideration in addition to anything of value to which the Individual already is entitled]

(E)The individual is advise in writing to consult with an attorney prior to executing the agreement.]

USC.29 section 633(b).

[In the case of an alleged unlawful practice ocurring in a state which has a law prohibiting discrimination in Employment because of age and establishing or authorizing a State authority to grant or seek relief from such discriminatory practice, no suit may be brought under section 626 of this title before the expiration of sixty days after proceedings have been earlier terminated: Provided, That such sixty days period shall be extended to one hundred and twenty days during the first year after the effective date of such State law. If any requirements for the comencement of such proceedings is imposed by State Authoriy other than the requirement of the filing of a written and signed statement of the facts upon which procceding shall be deemed to have commenced for the purposes of this subsection at the time such statement is sent by registered Mail to the appropiate State Authority.]

STATE STATUTES PROVISIONS

M.G.L. ch 149 Section 24B.

[Any provision in any contract., or agreement or understanding entered into on or after September first, 1984, which shall prevent the private sector employment of any person over the age of forty because of his age, except as permitted by Subsection 17 of section 4 of chapter 151B shall be null or void.]

M.G.L. ch 151 B Section 4 (17) (a).
It shall not be an unlawful employment practice for any person, employer labor organization or Employment agency to.

(a)[Observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement , pension, or insurance plan, which is not a subterfuge to evade the purposes of this section, except that no such employee benefit plan shall excuse the failure to hire any person, and no such seniority system or employee benefit plan shall require or permit the involuntary retirement of any person because of age except as permitted by paragraph (b).]
[Paragraph (b) is for bona fide executive]

M.G.L.ch 151 Section 19 (4)

[No person shall, for the purpose of evading this chapter, establish any arrangement or organization in his business, by CONTRACT , lease or agreement, whether written or oral , whereby a person who would otherwise be his Employee does not have the status of such employee]

M.G.L. ch 260 Section 2A.Three years ; actions of tort, contract for recover for personal injuries and replevin.

[Section 2A. Except as otherwise provided,actions of tort, actions of contract to recover for personal injuries, and actions of replevin, shall be commenced only within three years next after the cause of action.]

M.G.L. ch 260 Section 2. Six years

[Section 2 Action of contract, other than those to recover for personal injuries, founded upon contracts or liabilities, express or implied, except actions limited by section one or actions upon judgements or decrees of courts of record of the United States or of this or of any other state of the United States, shall except as otherwise provided, be commenced only within six years next after the cause of action accrues.]

M.G.L. 149 section 148B

[For the purpose of this chapter, individual performing
any service , except as authorize under this chapter, shall be deemed to be Employees under this section unless it is shown that : such an individual has been and will continue to be free from control and direction in connection with the performance of such services under his contract; and such service is performed either outside of all places of business of the enterprise; and , such Individual is customarily engaged in an independently established occupation, profession or business of the same nature as that involved in the service performed. The failure to withhold Federal or State Income taxes, unemployment conpemsation or workers compensation from an employee wages shall not be used for the purposes of making a determination under this section. The President and treasurer of a corporation and any officer or agent having the management of such corporation shall be deemed the Employer within the meaning of this section]

M.G.L. chapter 151A section 6A (6). Services not included in "employment".

[Section 6A The term "employment" shall not include service performed by an individual in the employ of the commonwealth or any of its instrumentality's or any political subdivision thereof

or any of its instrumentality's or any instrumentality of any of the foregoing and one or more states or political subdivisions of such individual performed such service as :

(6)an employee serving in a position which , under or pursuant to the laws of the commonwealth is appointed to either a nontenured policymaker or advisor,or in a policymaking or advisory position the performance of the duties of which ordinarily does not require more than EIGHT HOURS per week.]

M.G.L. ch 260 Section 13
Acknoledgment or new promise; Effect.

No acknowledgment or promise shall be evidence of a new or continuing contract whereby to take an contract out of operation of this Chapter or to deprive a party of the benefit thereof, unless such acknowledgment or promise has been made by, or is contained in , a writing signed by the party chargeable thereby.

CASE STATEMENT

Respondent triggers this complaint when on December 1994 classified the Employee (Petitioner) an independent Contractor after Earlier retirement. However ,continued paying Employee wages, disallowed 35 days of sick leave, recalled an Stock Option agreement illegally taken 2400 shares, Misrepresented Petitioner to avoid payment of Social securities taxes and Worker Compensation Insurance, then fired Petitioner when questioned about the illegality of their action.

1.) Petitioner brought charges under Breach of Fiduciary, Breach of Contract Misrepresentation, and Discrimination.

2.) The district Court Dismissed Breach of fiduciary and contract on tort and untimely, Misrepresentation for noncomplying with proper state law, and Discrimination for not complying with State procedure.

The Court of Appeal affirmed.

3.) The opinion and the Judgement of the federal courts are in conflict with existing states and federal laws . bringing the question whether the constitutional rights of petitioner have been violated

BASES FOR FEDERAL JURISDICTION

The Federal jurisdiction is pursuant to USC.28 Section 1332.

ARGUMENT

Statement

Petitioner asserts that under USC 28 section 1654 it is his constitutional right to conduit his own case personal by the rules of the court within its jurisdiction . However these rules do not imply that Petitioner shall know the law nor the remedies, and that duty is for the court and the judges conducting the case .

It is the obligation of Petitioner to present The Evidences and reason to believe that his Employment Rights under the law were violate resulting in Material Damage. and it is the Duty of the court in the name of justice to Construe liberally his allegations ,or allow leave to amend a complaint

freely in the absence of undue delay , bad faith , undue prejudice to the opposing party, repeated failure to cure deficiencies ,or futility.

see Forman v Davis , 371 U.S. 178,182, (1962).

Petitioner asked for leave to amend the Complain to add new charges that had to be processed with the State and repair the pleading base on the new findings. However this was denied on the bases that it was futile to allow it.

BREACH OF CONTRACT

1.) The Stock option Agreement of 1991 and 1993 is a covenant Governed by and construed in accordance with the Laws of Massachusetts. for a term of 10 years and one day. and Subject to

M.G.L ch 110A (Trade Regulation) as per the Stock Option Agreement paragraph 7 and 13. (Appendix E)

2.) Respondents failing to comply with OWBPA under an Employment earlier retirement agreement, converted the Petitioner into an Independent contractor in violation of States Laws M.G.L. ch. 149 section 24B. ch 151 Section 19(4),and Federal USC.29section 623 (f)(2) . 60 days later instructed Petitioner (verbally) to exercise his vested Options as a result of not longer being a key Engineer. Petitioner exercised 1600 vested shares and 2400 shares remained nonvested.

3.)At this very first point , because the Respondents had violated the States and federals law, to impose an status of Employment not of employee, with view to take his fringe benefits. and his rights

as an employee, that could have been considered a tort. However what is being argued whether Respondents had the right to " Claim " the Stock option contracts of 1991 and 1993 . under the same unlawful scheme, and without complying with the requirements of the OWBP act of 1990.It is clear by the evidence presented . That Respondents never complied with any document under the provision of the OWBPA. that would have given the right to claim the contract. Those arguments were presented by petitioner to the lower courts among other arguments reasoning why the decision taken by the lower courts is unjust and in conflict with State and Federal laws. and decisions made in other similar cases.

some of the Material is essential to understand the Petition and its included in the Appendix section D.

Appellan Original brief Sections:
[(Statement of Issues, of the case and Facts)
(The Stock Option Agreement) (Breach of Contract)]

Appellant Reply brief Sections:
[(Breach of Fiduciary) (Breach of Contract)
and (Discrimination)]

4.) Because Petitioner was retained by Respondents to work and Suffer ,It was irrelevant what Employment statute he had. The evidence presented is that Petitioner did complied with the agreement. and by law it was the obligation of Respondents to honor the agreement as a former Employee . The Options would be vested on 1996 ,1997 and 1998, The IRS determination [1] had not been made until February 2000. The District Judge erred in using the 1997 Memo to start accruing time, when in fact, Petitioner still had nonvested units according to Respondent

" Korn " Memo of February 1998. In which the Respondent compare the result of having kept the options and exercise it on February of 1998. when it would be vested completely. In fact it is clear that the memo of 1997 is rather a breach of contract by claiming that it was within their the right to recall the Stock Options in 1995 , thus in violation of the agreement par 6,7, 8,12 and 13. and claiming that Petitioner was not longer an Employee .

5.) the statement of this Memorandum is relevant that Respondent Korn was noticing Petitioner that the action of the corporation was consistent with the stock option agreement and Plan. However it is also a fact that Respondents in 1994 or 1995 did not advance that information to Petitioner bringing the

question whether Respondents have the right to claim this contractual agreement without complying with the OWBP act of 1990 and its requirements.

see [Oubre v Energy Operations,Inc 522 U.S. 422 (1998).]

7.) Respondents were Liable for the 2400 shares that were offered to Petitioner under the Stock Option agreement of 1991 and 1993. at the prize that it would have been convenient to Petitioner to exercise the Options . but Respondents in Violation of the Stock Option agreement Paragraph 7and 8 (appendix E) and violation of the Uniform Security act M.G.L. ch 110A section 101. did not allowed to do it, in 1997 or 1998. by using illegal methods and engaging in an act that would operate as a Fraud. or deceit under this chapter.

8.)The Court failed to recognize that the Stock Options Contract is govern and construe to the Law of Massachusetts.and paragraph 7 of the agreement must comply with the securities laws. of the State which is under M.G.L. chapter 110A .

Chapter 110A section 101 Said :

[It is unlawful for any person , in connection with the offer , sale or purchase of any security, directly or indirectly.]

(1)[To employ any device , scheme or artifice to defraud.]

(2)[to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made , in the light of the circumstances under which they are made , not misleading]

(3)[to engage in any act, practice , or course of business which operates or would operate as a fraud or deceit upon any person.]

9.) Also ; Under chapter 110A section 410 (e) .

[No person may sue under this section more than four years (4) after discovery by the person bringing the violation of this chapter or any rule promulgated or order issued thereunder.]

10.) The Lower court erred taking the suggested remedies by the Respondents , which of course would be bias to dismiss the case on a tort action base on a three years Statute, and under a law used for contract for recover for personal injuries and replevin. M.G.L. ch 260 section 2A. when the proper remedy for this type of action would be M.G.L. ch 260 Section 2. which is for actions other than those to recover for personal injuries, founded upon contracts or liabilities, express or implied. see [Ansin v River Oaks Furniture First Circuit 96-1734 (1996)] (Appendix D 3)

Therefore the dismissal of this case is in Conflict With the State Laws for liability on contract action, with the State Securities contract laws , and the Federal retirement laws USC 29 section 626(f)(1) and a Decision made by the First District court on similar case .

[The District court view of this action is on page 28 through 34 on the Report and recommendation on Defendant Ionics , Inc. Motion to Dismiss Plaintiff's Amended Complaint. (# 15)]

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[1][Although Petitioner was determine by the IRS an Independent contractor for tax purposes , the states do not recognize that statute under chapter 149 section 148B. and a consultant position is that of an Employee when is advisory position is more than 8 hrs per week. under chapter 151A: section 6A (6)]

DISCRIMINATION

1.) Petitioner did filed properly with the EEOC office in Miami Florida.an under the new sharing agreement between States and EEOC. a copy was sent to the Local office or Florida Comm. on human relations, not to Massachusetts. about 30 days after, a notice of dismissal with right to suit was sent to Petitioner. The Discrimination charge was entered on February 8 of 2001.The procedure was consistent with USC 29 Section 633(b) and within the timing allowed by law.

2.)The court of appeal erred in dismissing this claim without consideration of this court view on similar cases. and mentioned in the appealing Arguments.

[Astoria Federal S.&.L. Ass'n. v Solimino,501 US 104 (1991)]

[Oscar Mayer co v Evans 441 U.S. 750 (1970)]

This Argument has been extensively covered on page 12 through 16 on petitioner Appellant reply Brief dated January 24 of 2002. (Appendix section D3)

However the lower courts have a different opinion as shown on pages 36 ,37,38 and 39 of the Report and Recommendation of Defendant Ionics, Incorporated 's Motion to Dismiss Plaintiff's Amended Complaint (#15).

REASON FOR GRANTING THE PETITION

1.)[This Employment dispute is of great Importance to Thousands of Retirees Who ordinarily, remain working after taken their pension in a lump Sum. and classified as Consultant. Many with Stock options not yet vested , and accumulated Sick leave that would be needed in the years ahead. and not Knowing if States and federals laws would protect their previous contracts rights when Retiring and not properly informed under the OWBP Act.]

2.) A United States court of appeals has entered a decision in conflict with a decision made on the same important matter on a similar case.

3.) A United States court of appeals has decided an important Federal question in a way that conflicts with relevant decisions of this court.

CONCLUSION

For the reasons given in this Petition for a Writ of Certiorari, Petitioner Eduardo E Rojas request in the name of justices, that this court grant the petition.

RELIEF SOUGHT

Petitioner has suffered Material Damage in excess of $162,000, therefore Petitioner is seeking the proper relief granted by law and aproprite sum of money damages ascertained by the court with interest, cost and any other relief deems proper and just

Respectfully Submitted on September 12 of 2002

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